

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #11	CCRB Case #: 201506557	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/24/2015 7:25 PM	Location of Incident: in front of 85 Pitt Street	Precinct: 07	18 Mo. SOL 1/24/2017	EO SOL 1/24/2017	
Date/Time CV Reported Fri, 07/24/2015 9:00 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/06/2015 11:07 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Eric Konoski	03377	930497	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jason Pulver	27393	951089	PSA 4
2. POM Sean Carroll	10931	946831	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.SGT Eric Konoski	Abuse: Sgt. Eric Konoski frisked § 87(2)(b)	
B.SGT Eric Konoski	Abuse: Sgt. Eric Konoski searched § 87(2)(b)	

### Case Summary

On July 24, 2015, at approximately 7:25 p.m., PO Jason Pulver, PO Sean Carroll, and Sgt. Eric Konoski, from PSA4, stopped § 87(2)(b) in front of 85 Pitt Street in Manhattan for riding a bicycle against the direction of traffic on a one-way street. Sgt. Konoski frisked and searched § 87(2)(b) (**Allegations A and B**). § 87(2)(b) was not arrested or issued a summons.

There is no video recording of this incident.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation § 87(2)(b)
- § 87(2)(b) did not file a Notice of Claim regarding this incident (**Board Review 1**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (**Board Review 3**).
- Sgt. Eric Konoski has been a member of the service for 13 years and there are 3 substantiated CCRB allegations against him. In case number 200511684, one allegation of abuse of authority (frisk) was substantiated. The CCRB recommended charges; the NYPD did not issue any disciplinary action. In case number 200512992, two allegations of abuse of authority (question and frisk) were substantiated. The CCRB recommended charges; the NYPD issued command discipline.

### Findings and Recommendations

#### Explanation of Subject Officer Identification

§ 87(2)(b) described all three officers similarly: males in their 30s with muscular builds and dark hair. He stated two were Hispanic, one 5'8"-5'9" and one 5'6", and then the third officer, who searched him, was light-skinned and 5'8"-5'9". He stated that the officer who searched him was seated in the front passenger seat of the vehicle and is the officer who spoke to him at the station house. PO Pulver, PO Carroll, and Sgt. Konoski are all white males born within a year of each other with brown hair and blue eyes. PO Pulver is 6' and 210 pounds, PO Carroll is 5'9" and 246 pounds, and Sgt. Konoski is 5'6" and 175 pounds; their heights and weights are the only differentials among them. However, although Sgt. Konoski is the shortest officer, he is the officer who, by his and PO Pulver's account, was in the front passenger seat and by all officer accounts was the officer who primarily spoke to § 87(2)(b) at the station house.

§ 87(2)(g)

#### Allegations not pleaded

- § 87(2)(g)
- **Physical Force and Threat of Force:** In his civilian complaint report, § 87(2)(b) alleged that the officers kicked his injured foot and threatened to slam

him on the floor. § 87(2)(b) did not make these allegations in his phone statement or interview at the CCRB. § 87(2)(g)

**(Board Review 4).**

- **Refusal to provide name and shield numbers:** § 87(2)(b) alleged in his phone statement that the officers refused to provide their names and shields upon request. § 87(2)(b) did not repeat this allegation in his CCRB interview or civilian complaint report. § 87(2)(g)

**Allegation A- Sgt. Eric Konoski frisked** § 87(2)(b)

**Allegation B- Sgt. Eric Konoski searched** § 87(2)(b)

It is undisputed that Sgt. Konoski, PO Pulver, and PO Carroll observed § 87(2)(b) riding his bicycle against traffic and they stopped him to issue him a summons.

§ 87(2)(b) was wearing a short-sleeve shirt, red & black Jordan sneakers, a red & black cap, and red sweatpants which had six pockets: two pockets on each hip, two pockets on each thigh, and two pockets on each buttock. Each thigh pocket had a large zipper and was closed. § 87(2)(b) had a pack of cigarettes in his left hip pocket and a wallet in his right hip pocket. § 87(2)(b) did not have anything else in his pockets.

When § 87(2)(b) arrived at the deli located at 85 Pitt Street in Manhattan, he heard a screeching sound and noticed an unmarked car make a U-turn. Sgt. Konoski yelled from the front passenger seat for § 87(2)(b) to come over. § 87(2)(b) turned around and continued walking.

PO Pulver, PO Carroll, and Sgt. Konoski then exited their vehicle and approached § 87(2)(b). § 87(2)(b) Sgt. Konoski grabbed § 87(2)(b)'s bicycle and laid it down while PO Pulver and PO Carroll said, "We just want to speak with you," and grabbed his arms and stretched them out. § 87(2)(b) asked, "Who are you? Why are you stopping me?" Sgt. Konoski told § 87(2)(b) that they stopped him because his pockets were fat.

Sgt. Konoski first unzipped § 87(2)(b)'s right thigh pocket, entered the pocket, and did not find anything. Sgt. Konoski entered § 87(2)(b)'s right hip pocket, pulled out § 87(2)(b)'s wallet, searched through it, and pulled out § 87(2)(b)'s benefit card, which did not have his picture on it. Sgt. Konoski asked § 87(2)(b) if it was him, and wrote something down on a small notepad.

Sgt. Konoski unzipped § 87(2)(b)'s left thigh pocket, entered the pocket and did not find anything. Sgt. Konoski searched § 87(2)(b)'s left hip pocket, felt his pack of cigarettes, removed it, looked at it and put it back in the pocket.

Sgt. Konoski returned § 87(2)(b)'s wallet and the officers returned to their vehicle and drove off **(Board Review 5).**

Sgt. Konoski, PO Pulver, and PO Carroll stated that as § 87(2)(b) passed them in the unmarked car, they observed that he had a heavy rear left pocket that hung low. None of the officers recalled what § 87(2)(b) was wearing. PO Carroll and PO Pulver could not

recall its shape, size, or dimension, but believed that it could have been a gun because of how heavy the pocket was. Sgt. Konoski stated both that the bulge was about 5 to 6 inches long, but that he could not see because the bulge swung as § 87(2)(b) rode the bicycle. Because of the swing, Sgt. Konoski thought it was a weapon and specifically thought it was a firearm.

All of the officers corroborated that, as they made a U-turn in the unmarked car and came behind § 87(2)(b) § 87(2)(b) darted to the right, in between two cars, and ducked down. None of the officers saw what § 87(2)(b) was doing but they believed that he was trying to discard something. § 87(2)(b) was then headed towards the deli. All of the officers corroborated that § 87(2)(b) stopped when the officers instructed him to stop. All of the officers corroborated that § 87(2)(b) was agitated and angry and continuously reached towards his pocket. All of the officers corroborated that they attempted to explain to § 87(2)(b) why they stopped him, but that he did not seem to understand that he had committed a traffic violation, and therefore, was warned and admonished, and was not issued a summons **(Board Review 6,7 and 8).**

Sgt. Konoski stated that he was facing § 87(2)(b) upon the approach while PO Pulver and PO Carroll stood around § 87(2)(b) § 87(2)(b) became agitated, irate, touched the heavy left pocket and moved his arms around. Sgt. Konoski did not recall any other statements § 87(2)(b) made except, “I’m gonna have your job” and “you guys can’t do this.” The officers told § 87(2)(b) at least three or four times, “Please don’t touch your pocket.” § 87(2)(b) kept touching the heavy left pocket which became a safety concern for the officers since they believed he had a weapon. Sgt. Konoski explained that based on his training and experience, this action could be done subconsciously to conceal or make sure whatever is in the pocket is secure. After the failed verbal attempts, the officers decided to frisk the heavy rear left pocket to make sure that § 87(2)(b) did not have any weapons that he may be trying to conceal or reach. Sgt. Konoski frisked § 87(2)(b) § 87(2)(b)s rear left pocket. Sgt. Konoski believed that PO Pulver and PO Carroll held onto § 87(2)(b)s arms to make sure he did not run away. The frisk lasted less than a minute. Sgt. Konoski believed that § 87(2)(b) had a bunch of items in the rear left pocket, which is why it was heavy. Sgt. Konoski still felt a hard object, between 5 and 6 inches in diameter that could have been a gun or a knife, because firearms can be concealed in many ways and are different sizes. Sgt. Konoski believed he searched the rear left pocket and believed § 87(2)(b) § 87(2)(b) had a cellphone, cigarettes, and that the hard object was a wallet. Sgt. Konoski did not recall if any other pocket was frisked. Sgt. Konoski did not remember PO Pulver or PO Carroll frisking § 87(2)(b) Sgt. Konoski did not believe that any other pocket was searched because his attention was on the rear left heavy pocket. No weapons were found **(Board Review 8).**

PO Carroll and PO Pulver corroborated that § 87(2)(b) was told repeatedly not to touch his pocket and that the officers felt threatened by this action because they did not know whether § 87(2)(b) possessed a weapon. Both PO Carroll and PO Pulver said that they grabbed § 87(2)(b)s hand to stop him from reaching his pocket. PO Pulver stated that believed he was the one that frisked § 87(2)(b)s pocket and that, during the frisk, § 87(2)(b) stated, “You don’t have probable cause. You can’t touch me,

you can't search me." PO Carroll also stated that he frisked § 87(2)(b)'s pocket. PO Carroll stated that he used his foot and physically spread § 87(2)(b)'s legs to diminish § 87(2)(b)'s leverage. PO Carroll did not think that any other pocket was frisked or searched (**Board Review 7**). PO Pulver did not think that any other pocket was frisked. PO Pulver did not recall § 87(2)(b) being searched, even after reviewing the Stop, Question, and Frisk report (**Board Review 6**).

The Stop, Question and Frisk report, prepared by PO Pulver, states that § 87(2)(b) was frisked and searched. § 87(2)(b) was observed for approximately one minute prior to the stop and was suspected of criminal possession of a weapon. The circumstances noted as leading to the stop are furtive movements and a suspicious heavy bulge/object in § 87(2)(b)'s left rear pocket. The stop lasted three minutes. It is noted that physical force, hands on, was used to overcome § 87(2)(b)'s resistance and because § 87(2)(b) reached for the suspected weapon. § 87(2)(b) was frisked because he had a suspicious heavy bulge/object in his rear left pocket, he refused to comply with the officers' directions, and because he made furtive movements. § 87(2)(b) was searched because of the hard object. No weapon or contraband was found. § 87(2)(b)'s demeanor after being stopped was described as aggressive and non-compliant. § 87(2)(b) stated, "You can't stop me." Listed as additional circumstances/factors are that the area has a high incidence of reported offense of type under investigation, that § 87(2)(b) gave evasive, false or inconsistent response to officers' questions and that he changed direction at the sight of officers (**Board Review 9**).

In order to frisk a person, an officer must have reasonable suspicion that the person stopped is armed and dangerous. Arizona v. Johnson, 555 U.S. 323, 356-27 (2009) An officer may frisk a person when they fear for their safety based on the observation that the person reaches toward their pocket, against the instruction of the officer. People v. Robinson, 278 A.D.2d 808 (4<sup>th</sup> Dept. 2000) A search is improper if an item does not resemble or feel like a weapon during a pat down. People v. Rodriguez, 856 N.Y.S. 2d 502 (Sup. Ct. Bronx. Cty. 2008) (encl. A9-15). (**Board Review 10**)

§ 87(2)(g)  
[REDACTED]

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§ 87(2)(g) [Redacted]  
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Squad: **11**

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date